EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

OLIVIA VAN HOUSEN, STEFAN REBIC, and NATE DIUZAK, Plaintiffs, -vs- AMAZON.COM, INC., and AMAZON WEB SERVICES, INC., Defendants.	)	Case No. 23 C 15634
CARLEEN COULTER, individually and on behalf of all others similarly situated, Plaintiffs, -vs- HUDSON GROUP (HG) RETAIL, LLC, doing business as HUDSON NONSTOP, and DUFRY AMERICA, LLC, Defendants.	)	Case No. 23 C 16176 Chicago, Illinois November 6, 2024 9:47 a.m.

TRANSCRIPT OF TELEPHONIC PROCEEDINGS
BEFORE THE HONORABLE LaSHONDA A. HUNT

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PROCEEDINGS REPORTED BY STENOTYPE
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(Proceedings heard in open court:)

THE CLERK: Okay. I'm going to go ahead and call the case. 23 Civil --

THE COURT: All right. Thank you.

THE CLERK: -- 15634, Van Housen, et al., versus Amazon.com, Inc., et al., and the related case, which is 23 Civil 16176, Coulter versus Hudson Group (HG) Retail, LLC, et al.

And could we have appearances for the record, starting with counsel for plaintiff. Thank you.

MR. BOLEY: Good morning, your Honor. This is Justin Boley from Wexler Boley & Elgersma on behalf of the plaintiffs in both cases, and I'm appearing -- I'm the only one appearing for plaintiffs today.

THE COURT: All right. Good morning.

MR. KABA: Good morning, your Honor. Moez Kaba of Hueston Hennigan on behalf of the defendants in both cases.

THE COURT: All right.

MS. STETSKO: Good morning, your Honor. Kathleen Stetsko of Perkins Coie on behalf of the defendants in both cases.

THE COURT: All right. Okay. So, it sounds like we have everyone.

All right. I have reviewed the motions to dismiss that have been filed in each of the cases. I know that there

are some overlapping claims here, and so I'll start first with the Van Housen case, and then some of my ruling will also apply to the Coulter case; but then there are a couple of additional arguments that have been raised in Coulter that I need to address.

And then there's going to be one difference between the two cases. So, I'll tell you in advance that for the most part, the motions to dismiss will be denied; but actually the Coulter motion to dismiss will be granted in one small part, so just so that you know where I'm going as you're listening to this.

So, let me start with the Van Housen case and my ruling there. So, the plaintiffs allege that defendants Amazon Go and Amazon Fresh Stores employ this proprietary Just Walk Out or JWO technology, which consists of this complex network of sensors, cameras, machine learning, and artificial intelligence that work to automatically detect when products are taken from store shelves and keep track of those items in a virtual cart. That's what the plaintiff alleges.

Plaintiffs further allege that the JWO technology collects, uses, stores, and disseminates biometric identifiers, including facial geometry, hand geometry, and voice prints. Again, those are allegations in the complaint.

Plaintiffs contend that defendants' technology and this biometric data collection are shown in its various patent

filings, including patent No. US 2015/0012396, which is entitled, "Transition Items From a Materials-Handling Facility."

So, the plaintiffs have brought claims under the Illinois Biometric Information Privacy Act, or BIPA, for failure to establish a publicly available policy, claim one; to obtain biometric identifiers without written informed consent, which is claim two; profiting from biometric information, claim three; and disclosing biometric information, which is claim four.

The defendants have moved to dismiss, essentially arguing that the plaintiffs haven't plausibly alleged that they collect biometric identifiers or alleged disclosure, as well as whether there was actually a sale of this data.

In addition, in the Van Housen case, the plaintiffs -- after all the initial briefs were filed, the plaintiffs moved for leave to file a surreply in opposition.

So, let me first start with the BIPA claim for collection of biometric identifiers. So that's claims -- sort of combined. So, for purposes of BIPA, a biometric identifier is this retina or iris scan, fingerprint, voice point, or scan of hand or face geometry, which is indicated in 740 ILCS 14/10.

So here, the plaintiffs contend that the defendants are collecting their facial geometry, hand geometry, and voice print, and in support of those allegations, they point to the

defendants' patents, including the '396 patent.

According to the complaint, the '396 patent provides that, one, various techniques may be used to identify a user; for example, this image capture and facial recognition may be used; number two, image capture devices may be positioned overhead to capture images of users; three, one or more images may be captured of the user's hand prior to it passing into and as it exits the inventory location; and then, four, microphones may record sounds made by the user and the computing resources may process those sounds to determine a location of the user.

Again, this is all alleged in the complaint.

The defendants argue that those patent filings do not support plaintiffs' theories for a number of different reasons, but I boil it down into sort of two main issues. One, the defendants don't believe that those patents show that they are actually using the patented technology -- in the complaint, I should say, it doesn't show that they're actually using the patented technology; and two, there's a question about whether the patented technology actually collects these biometric identifiers.

So, there are two cases that I think are relevant here. *Delgado v. Meta Platforms, Inc.*, No. 23 CV 4181, 2024 Westlaw 818344, Northern District of California, February 27th, 2024. That was a case where the plaintiff alleged that Meta collected her voice print without complying

with the requirements of BIPA, and in support of those claims, she relied on -- the plaintiff relied on Meta's patent. In response, Meta argued that the plaintiff failed to show that Meta actually practiced the patent.

And the court found that many of Meta's arguments, including those related to whether Meta practiced the patents, were more appropriate for consideration at a later stage of the case. Because, obviously, this is a Rule 12(b)(6) motion, and I am looking only at the pleadings and whether they plausibly allege a claim under the *Iqbal* and *Twombly* standards. And so that was how the district court in California looked at that question about whether there was actually evidence of practicing the patent.

The other case I focused on was *Carpenter v. McDonald's Corp.,* 580 F.Supp. 3d 512, 517 to 518, Northern District of Illinois 2022, where the plaintiff alleged that McDonald's violated BIPA by using an artificial intelligence voice assistant to collect customers' voice prints. In response, McDonald's argued that the plaintiff's allegation that the technology identified the individual speaking or extracted biometrics was belied by the defendant's patent.

And notwithstanding those arguments, the court found that based on the facts pleaded in the complaint, including the referenced patent, it was reasonable to infer, though far from proven, that defendant's technology mechanically analyzes

customers' voices in a measurable way such that McDonald's has collected a voice print from plaintiff and other customers. Discovery may show that defendant's technology cannot or does not collect any vocal information that could be used to uniquely identify an individual, in which case summary judgment may be appropriate; but plaintiff has alleged sufficient factual information to make a plausible claim at this early stage.

So, here in this case, the '396 patent indicates that the technology, one, may be used in retail stores; two, can collect biometrics; and, three, functions to provide an experience that is like the experience of visiting one of defendants' stores.

And so at this stage of the case, again, as I already indicated, a claim for relief must be plausible, rather than merely conceivable or speculative. But all this means is that the plaintiff must include enough details about the subject matter of the case to present a story that holds together.

At this pleading stage, we do not ask whether these things actually happened. Instead, the proper question to ask is still: Could these things have happened? That is *Runnion ex rel. Runnion* v. *Girl Scouts of Greater Chicago and Northwest Indiana*, 786 F.3d 510, 526, Seventh Circuit 2015.

And I -- like the plaintiffs in *Delgado* and the *Carpenter* cases, the court agrees that the plaintiff has

plausibly alleged that the defendant practiced the patent in its stores and that the JWO technology captures those biometric identifiers.

The second issue that I'll turn to is the question of disclosure. So, "disclose" means to make known or to reveal something that is secret or not generally known. That's from the *Cothron* case, *Cothron* v. *White Castle Systems, Inc.*, 216 N.E. 3d 918, 925, Illinois 2023, as modified on the denial of rehearing, July 18, 2023, examining the plain meaning of "disclosed."

So here in this case, the plaintiffs allege that defendants disclose and re-disclose the biometric data of shoppers from cameras, computers, and servers in the JWO store itself through the Internet and to computers and servers external to the store like servers at AWS and Amazon or other third-party cloud platforms whose employees may also have access to data. And that's in the complaint at paragraph 43.

So, the defendants argue here that the plaintiffs' allegations that the defendants use their own servers and services to host data doesn't constitute a violation of Section 15(d). In addition, defendants argue that the plaintiffs' reliance on the patent to demonstrate that Amazon could disclose information to third parties is insufficient to make plaintiffs' claims plausible.

The court disagrees, as plaintiffs' allegation that

defendants are disclosing these biometric identifiers to third-party cloud platforms is sufficient to state a claim under Section 15(d). See *Figueroa v. Kronos, Inc.*, 454 F.Supp. 3d 772, 785, Northern District of Illinois, 2020. In that case, the court commented that the complaint alleges that Kronos disseminated plaintiffs' biometric data to other firms that hosted the information in their data centers. That is a textbook violation of Section 15(d).

Additional cite, *Heard v. Becton Dickinson & Company*, 524 F.Supp. 3d 831, 843, Northern District of Illinois 2021, finding that plaintiff's allegation that defendant disseminated biometric data to unknown third-party data centers was quite thin, but nonetheless sufficient to state a claim under Section 15(d).

And then with respect to BIPA claim -- there's a BIPA claim under Section 15(c). Section 15(c) of BIPA states that no private entity in possession of a biometric identifier or biometric information may sell, lease, trade, or otherwise profit from a customer's biometric data. The defendants raise this claim in the opening brief. The plaintiff responded, and the defendant did not address the plaintiffs' response in the reply brief. And so I don't know if that was meant to indicate that the defendant was no longer contesting that point, but even assuming the defendant is not, the Court finds that because the plaintiff -- the plaintiff here alleged that the

data was used in AI, in machine-learning algorithms to not only improve this technology, but to also sell it to other retailers, then that allegation is sufficient under the *Thornley* holding in the Seventh Circuit case? *Thornley v. Clearview AI, Inc.*, 984 F.3d 1241, Seventh Circuit 2021, to state a claim under Section 15(c).

With respect -- so, that is the motion to dismiss in the Van Housen case, and that motion to -- defendants' motion to dismiss, for all of those reasons, will be denied.

With respect to the plaintiffs' surreply, move for leave to file one arguing that the defendants raised new arguments in the reply brief regarding correspondence that was sent to plaintiffs' counsel and the defendants opposed that request to file a surreply, the Court did not rely on those pre-litigation communications between defendants' and plaintiffs' counsel in ruling on the motion to dismiss; and, therefore, there's really no need to even consider whether a surreply should or should not be filed. And so that motion will be denied as unnecessary.

All right. So, that is the Van Housen ruling. With respect to the Coulter case, much of what I would have to say is pretty much the same.

So, in the Coulter case, the facts alleged there are very similar to the facts alleged in the related case. Specifically, the plaintiffs there allege that the defendant,

Hudson Nonstop store employs Amazon's proprietary Just Walk Out data technology, which as I've already explained, consists of this network of sensors and cameras and other information that works to automatically detect when products are taken off their store shelves and basically tracks them in a virtual cart. So that -- those are the allegations in the complaint.

Again, as with the Van Housen case, the plaintiffs here allege that the JWO technology and its biometric data collection are shown in Amazon's various patent filings, including the '396 patent.

So similar or very same claims are brought in this case as in the other case, and the same sort of issues arise there with respect to number one, whether the patent has been practiced and whether the -- whether the defendants are actually using that patented technology and whether the patented technology collects those biometric identifiers.

And so for all of the reasons that I have stated in connection with the Van Housen case, I find that, again, the plaintiffs in the case have plausibly alleged that the defendants are practicing the patent in the store and that the JWO technology is capturing those biometric identifiers. And then second, I find that the allegations sufficiently allege that there has been -- there is disclosure of that information as well.

Where I vary slightly in the Coulter case is with

respect to BIPA Section 15(c) because in that case, this is a situation where it's essentially a retailer who is using the technology, and the argument is that because the retailer -- because the defendant is profiting from the sale due to the minimal labor cost, that that is the basis for a 15(c) claim. And I don't think that that is actually sufficient based on the Seventh Circuit's ruling in *Thornley*, which -- and I'll cite to actually a district court case that describes that holding, *Halim v. Charlotte Tilbury Beauty, Inc.*, No. 23 CV 94. It's 2023 Westlaw 3388898, May 11th, 2023.

In that case, the district court explained the holding in *Thornley* as follows:

"The Appellate Court explained that Section 15(c) creates a, 'general rule that prohibits the operation of a market in biometric identifiers and information.' Without any 'allegations of concrete and particularized harm to the plaintiff,' a claim that defendant violated Section 15(c) is insufficient to establish Article III standing.

"It noted that a plaintiff might have a Section 15(c) claim if, for example, the plaintiff asserted that by selling her data, the collector has deprived her of the opportunity to profit from her biometric information; that the act of selling her data amplified the invasion of her privacy that occurred when the data was first collected, by disseminating it to some unspecified number of other people; or that the scraping of

data from social media sites raised the costs of using these sites in some respect." And that's *Halim* at page 9.

None of that has been alleged here in the complaint that has been filed against the defendant retail store. And merely alleging that somehow the sales alone are -- the fact that there are sales being made is enough to satisfy Section 15(c) I don't think comports with the *Thornley* case. And so I do believe that that claim cannot stand.

And since the case was actually removed here, I think that one claim would actually be remanded, although we can talk about that in a second, what you want to do with the 15(c) claim.

Let me go to the final claim in the Coulter case, which is different from the Van Housen case. There is an additional argument that the defendants make about the government contractor exception.

So, the requirements of BIPA only apply to private entities. That's *Enriquez v. Navy Pier, Inc.*, 2022 IL App. (1st) 211414-U, paragraph 19, appeal denied, 201 N.E. 3d 582, Illinois 2023, citing 740 ILCS 14/15.

Specifically, Section 25(e) provides that the act does not apply to a contractor, subcontractor, or agent of a state agency or local unit of government when working for that state agency or local unit of government. And again, the *Enriquez* case indicates that.

"Thus, an entity is exempt under Section 25(e) if it is, one, a contractor, two, of a unit of government and working for that unit of government at the time it collected or disseminated biometric information."

So here, the defendants contend that judicially noticeable documents show that the defendants operate their store pursuant to city government contracts; and, therefore, they are exempt from BIPA. Plaintiffs, however, argue that defendants are retail tenants that were not working for the government when they collected biometric data. The Court agrees with the plaintiff.

In *Enriquez*, the plaintiff alleged that the defendant violated BIPA by collecting and disseminating her fingerprint. The defendant moved to dismiss arguing that it was subject to the government contractor exception -- exemption, I'm sorry. In response, plaintiff argued that defendant was a lessee of the government entity, not a government contractor. The court disagreed, finding that although the agreement bears some characteristics of a net lease, the underlying substance of the agreement is for defendant to manage, operate, and develop virtually all aspects of Navy Pier on behalf of the government entity.

Additionally, the court found that the defendant there was working for the government entity when it collected the plaintiff's biometric information as the defendant was in an

employment or services relationship with the government entity.

So here, in support of their position, the defendants point to press releases issued by the City of Chicago and the retail license agreement between defendants and the City of Chicago. And the plaintiffs do not object to defendants' reliance on these documents, even though they are documents that are outside of the four corners of the complaint.

So, the May 2017 press release references an agreement between the Midway Partnership and the City of Chicago, where Midway Partnership agreed to invest 75 million to renovate and expand concessions at Midway. That referenced agreement, though, has not been provided to the Court.

The retail license agreement provides defendants a license to conduct concession operations in a retail space and operate and maintain storage space. Additionally, the agreement provides that nothing in the agreement is intended to create any relationship other than that of licensor and licensee or any partnership, joint venture, association, or organization of any kind between the city and licensee.

So, at this stage of the litigation, based on those documents, the Court will not conclude that defendants plainly fall under the Section 25(e) exemption. *Flores v. Motorola Solutions, Inc.*, No. 20 C 1128, 2021 Westlaw 232627 at 2, Northern District of Illinois, January 8th, 2021.

The defendants' agreement to renovate and expand concessions, which was described in the May 2017 press release, arguably created a services relationship between the defendant and the City of Chicago. However, the Court is not yet convinced that the defendants were working for the government when they were operating the Hudson Nonstop store. We need definitely more of a record developed on that before the Court can make that determination.

And notably, the retail license agreement in this case is much more limited than the agreement in *Enriquez*, where the defendant actually agreed that it was managing and operating virtually all aspects of Navy Pier on behalf of the government entity.

So, that claim can go forward, although defendants can certainly raise that statutory exemption argument at later stages of the litigation.

All right. So, sometimes these oral rulings are very, very painful to do. It's painful for me to read. It's probably painful for you to listen it. But that's often a more effective way to just move the case forward.

So, I think the first question that I will ask is in both cases, since the motions to dismiss basically for the most part have been denied, when would the defendants like to file their answer to the complaint?

MR. KABA: Your Honor, it's Moez Kaba on behalf of the

defendants. In light of the intervening holiday, we would normally say 21 days, but would it be okay with the Court if we had 30 days and we filed by December 6th?

THE COURT: Sure. So, that answer -- those answers are due by December 6. And then I will set a date for the parties to submit a discovery plan. Normally I just do about 14 days after the answer is due, but that would take you to December 20th, which is right before the holidays, or we can go to after the holidays.

MS. STETSKO: There's really nothing more than --

THE COURT: Yep.

MR. BOLEY: Sorry. This is Justin Boley for the plaintiff, and I was going to say that the earlier date works just fine for us if it works for defendants. December 20th would be fine for a discovery plan on our side.

MR. KABA: Yes, your Honor, we'll -- we'll make December 20th work as well.

THE COURT: Okay. So then, December 6th for answers, and December 20th for a joint proposed discovery plan.

All right. So then, with respect to the Coulter case, because I granted the motion -- I'm sorry, denied the motion to dismiss for the most part, but granted as to that one claim, how do the parties want to proceed with that?

Because technically, I think I should remand it, but I don't know if you want me to do that. I don't have to do

anything today. I mean, it can just stay in the complaint and be identified as the Court dismissed this claim if that's how you want to proceed, but I at least wanted to check and ask your opinion.

MR. BOLEY: Thank you. Your Honor, this is Justin Boley for plaintiff again. I think our position would be that given what I understand to be the Court's ruling in dismissing the Coulter 15(c) claim, which is essentially Article III, lack of Article III standing, and the procedural stance, given that we filed in state court, that the correct next step from the dismissal is, as your Honor identified, to remand that claim to state court. I think that's the right thing to do, given the nature of the ruling.

THE COURT: All right. Then I will remand that to -- that one claim to state court, and the rest of this will proceed.

So, do you want the same deadlines in the Coulter case as well, keep those on the same track?

MR. BOLEY: Yes, your Honor. This is again Justin for plaintiff. And I might suggest that for now, we keep it that way, the same track; and that if it's okay with the Court, on our -- the deadline for our discovery plan submission, December 20th, it may be after we discuss this with defendants that there may be some other kind of housekeeping issues related to consolidation and docket management that we could do

to make it easier for the Court, instead of having two dockets running parallel, that we consolidate in some way just for ease of future filings and things like that.

I don't know if that's something the Court will want from us or even the defendants will entertain, but there may be some things that we can submit on December 20th to further streamline the coordinated consolidated -- the coordinated cases, sorry, they're not consolidated, but coordinated cases, to make it easier in the future, if that might be helpful to the Court.

THE COURT: Right. I think that probably would be helpful, and why don't you just tell me in your proposed discovery plan. You can treat it like you would treat a status report, but you can tell me in your discovery plan. I always ask if there's anything else that the Court should know.

And so just include the information there if you have a proposal. If you want these two cases consolidated just for pretrial proceedings, consolidated for trial, whatever you think, tell me that, and then we can enter an appropriate order. Because I think it might make sense to consolidate for pretrial proceedings. It might not make as much sense for if it goes to trial.

MR. BOLEY: That sounds great. Thank you, your Honor.

MR. KABA: And, your Honor, we'd like -- sorry, your Honor. It's Moez Kaba.

THE COURT: Okay.

MR. KABA: We -- I appreciate the consolidation request, or at least coordination request, and we appreciate that the Court will give us an opportunity to sort of reflect on it a bit as well; and we'll state our positions, if there are contrary positions, in our discovery plan.

THE COURT: Yep. And just tell me if you object.

MR. KABA: Yeah. Thank you. I also think -- I understand the Court -- we have sort of this interesting issue of whether 15(c) needs to be remanded if the Court's ruling was based on a sort of lack of plausibility of the claim as alleged, and then we have this question of what happens next with our case.

And so I understand plaintiffs' view is that it ought to be remanded. If the Court would give us just a little bit of time to reflect on that as well and submit our views to the Court on the appropriate next step, I think we would appreciate that.

THE COURT: Right. I mean, you certainly can. I don't have a problem with it. But it's essentially -- the *Thornley* case addresses it as a lack of standing. And so I don't -- you know, I know that it was raised in the context of you haven't stated a claim, but really, the Seventh Circuit says this is about Article III standing.

And so I don't really know that there is much

flexibility here, but I'll certainly wait until I get those -- let's just call it instead of a discovery plan, a joint status report that will include a discovery plan, you know, thoughts on next steps, and then any other matters that the parties want to bring to the Court's attention.

MR. KABA: Appreciate that. Thank you, your Honor. We'll coordinate with plaintiffs to get that submitted on December 20th in both cases.

THE COURT: Okay. All right. Thank you, everyone, for your patience here.

MR. KABA: Thank you.

MR. BOLEY: Thank you, your Honor.

THE COURT: All right.

(Proceedings concluded at 10:19 a.m.)

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I certify that the foregoing is a correct transcript, to the extent possible, of the record of proceedings in the above-entitled matter given the limitations of conducting proceedings via telephone.

/s/ CHARLES R. ZANDI *February 27, 2025*
CHARLES R. ZANDI, CSR, RPR, FCRR
Official Court Reporter